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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE  
SECRETARY OF STATE

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October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Robert J. Lamont  
Banking, Division of  
Capitol Complex  
Building 3, Room 311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rule Pertaining to the Legal Lending Limit, 106CSR9**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Banking

**Subject:** Rule Pertaining to the Legal Lending Limit, 196CSR9

PERTINENT DATES

Filed for public comment: July 20, 2000

Public comment period ended: August 21, 2000

Filed following public comment period: August 30, 2000

Filed LRMRC: August 30, 2000

Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 defines terms. The definition of the term "person" has been amended to include limited liability companies or any other legal form of entity of organization, not specifically listed.

Section 4 relates to combining loans to non-affiliated persons or entities. The current rule provides that a "common enterprise" will be determined to exist when separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons combined will own more than 50% of the voting securities. The proposed rule would lower the percentage to 25% and include other voter ownership interests of the entity.

Section 5 relates to combining loans to affiliated persons or entities. A new subsection 5.1 containing general rules has been added. The current rule provides that an entity is affiliated with a person which owns or beneficially owns more than 50% of the voting stock. The proposed rule would lower the percentage to 25% and include other voter ownership interests of the entity. It also adds control as well as ownership.

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Section 6 relating to loans to partnerships, joint ventures and associations has been deleted.

Section 7 relates to exceptions to the lending limits.

Subsection 6.8 relating to discount of installment consumer paper provides that loans and extensions of credit arising from the discount of negotiable and non-negotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee of any one person or common enterprise transferring the paper are subject to a maximum limitation equal to 10% of the bank's unimpaired capital and unimpaired surplus. The proposed rule would raise the maximum limitation to 25% with a stipulation that the state-chartered banking institution has assessed the financial capacity of the endorser or guarantor upon which it is relying.

Subsection 6.11 contains the exception for loans to a person, corporation or other type of business entity owning the property in which the state-chartered banking institution is located. Language has been added stating that the exemption is intended for persons who own real property and lease 51% or more of the usable space to a state-chartered banking institution for use either as a main office or branch office or other operations of a bank, and through its lease payments, the state-chartered banking institution provides or is capable of providing 100% of the debt service on the loan or extension of credit.

Section 8 contains miscellaneous provisions. Language has been added regarding the sale of federal funds which would allow the sale of immediately available balances for one business day under a continuing contract or for more than one business day. It has also been amended to provide that the sale of federal funds to other banking or other depository institutions regardless of maturity are subject to a maximum limitation equal to 25% of the banks unimpaired capital and unimpaired surplus.

Subsection 8.6 relates to sale of loan participation. It requires the state-chartered banking institution to have a written commitment to purchase from the participating bank prior to loan closing and remove the disallowed portion of the loan from the books within 10 business days of closing in

order to remove the sold nonrecourse portion of a loan or extension of credit from a bank's lending limit.

Subsection 8.8 relating to loans to or guaranteed by general obligations of a state or political subdivision has been deleted.

#### AUTHORITY

Statutory authority: W.Va. Code, §31A-4-26, which provides, in part, as follows:

...(5) (A) The commissioner of banking may prescribe rules to administer and carry out the purposes of this subsection including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit...

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.